

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 MITCHELL E. BOUYER SR, et al.,

6 Plaintiff(s),

No. C 08-5583 PJH

7 v.

ORDER

8 COUNTRYWIDE BANK, et al.,

9 Defendant(s).
10 _____/

11 Plaintiffs filed this action December 15, 2008. Defendant Countrywide Bank FSB
12 ("Countrywide") filed a motion to dismiss for failure to state a claim on January 21, 2009.
13 After plaintiffs declined to proceed before a magistrate judge, the matter was reassigned to
14 the undersigned district judge. The motion was renoticed for hearing on April 1, 2009.
15 Plaintiffs filed no opposition to the motion and it was granted. The complaint was
16 dismissed with leave to amend along with detailed reasons why the complaint was
17 defective and what was needed to cure the deficiencies. Plaintiffs filed their first amended
18 complaint on April 27, 2009, naming Countrywide again as well as a new defendant Diablo
19 Funding Group, Inc. ("Diablo"). On May 14, 2009, Countrywide filed its second motion to
20 dismiss for failure to state a claim noticed for hearing on June 24, 2009. Plaintiffs once
21 again did not file an opposition to the motion. Plaintiffs also did not appear at the hearing.
22 The complaint was dismissed for failure to state a claim, this time with prejudice.

23 The case management conference scheduled for July 30, 2009 remained on
24 calendar in view of the remaining defendant, Diablo. Plaintiff Mitchell Bouyer appeared at
25 the conference and indicated that he was misled by opposing counsel as to the need for
26 him to attend the hearing, that he took issue with the court's order dismissing his complaint,
27 and that he wanted time to obtain a lawyer.
28

1 The court granted plaintiff a period of 60 days to find counsel and to move for
2 reconsideration or other appropriate relief as to the order already issued by the court. The
3 court further agreed to defer entry of judgment on that order until after the 60 day period.
4 Plaintiff was also reminded that the new defendant, Diablo, had to be served within 120
5 days of his filing of the first amended complaint, or it would be dismissed for failure to
6 serve. Problems with effecting service on Diablo is another issue that plaintiff believes
7 counsel can assist him with.

8 Accordingly, plaintiff shall substitute counsel in this case and file any request for
9 relief from the court's prior order no later than September 28, 2009. Additionally, Diablo
10 must be served by this date or it will be dismissed. If plaintiff does not comply with these
11 orders, Diablo will be dismissed and judgment will be entered as to Countrywide.

12 **IT IS SO ORDERED.**

13 Dated: July 31, 2009



PHYLLIS J. HAMILTON
United States District Judge